

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

F.A.O.No.2368 of 2005

Date of Decision: November 21, 2007

Promila Appellant.

Versus

Om Parkash and others Respondents

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.Harsh Bunger, Advocate for the appellant.

Mr.Shiv Kumar, Advocate for respondent No.4.

S. D. ANAND, J.

1. This appeal calls into question the validity of order dated 1.2.2005 vide which a petition, preferred by the appellant for her appointment, was declined by the learned Trial Court.

2. The appellant is concededly mother of minor children, namely Anuradha and Jyoti whom she had begotten from the loins of her husband Brij Mohan Yadav. The minor children are under the guardianship of Respondent No.4-Geeta Devi who is mother of deceased Brij Mohan Yadav. Respondents No.1 to 3 are relations of deceased Brij Mohan and respondent No.4. The pure and simple plea raised by the appellant is that she is the natural guardian of minors and the future/interest of the minors lies in their being in her custody.

3. The respondents contested the plea aforementioned by averring

that the appellant having left the matrimonial house without having taken along her minor daughters cannot be heard to be a valid custodian of their interest, particularly when she has no means of sustenance and she cannot be thereby said to be capable of taking care of their future. The averment made by the appellant that respondents No.1 to 3 are also trying to obtain the custody of the minor children was denied. Respondents No.1 to 3 did concede that they are otherwise related to respondent No.4 and the minor children.

4. The trial proceeded on the following issues:

1. Whether the petitioner is entitled to be appointed as guardian of minor daughters namely Anuradha and Jyoti and also their custody ? OPA

2. Relief.

5. Learned Trial Court disposed of Issue No.1 against the appellant on account of her inability to adduce any evidence whatsoever in support thereof.

6. Learned counsel for the appellant argued that the appellant being mother of her children must get their custody as she is best suited to take care for their interest.

7. The plea is neither here nor there. As already noticed, the respondents raised a precise plea that the appellant left the matrimonial house without taking her daughters along. Though the appellant did file a re-joinder to that effect, it may be noticed that there is no substantive evidence whatsoever on record to prove that the appellant is possessed of adequate financial resources for her own sustenance and for the upkeep of her minor daughters. It was for the appellant to step into the witness box

and indicate the circumstances under which she left the matrimonial house without taking her minor daughters along. If she were to indicate a fact in the context attributing blame for the retention of the minor daughters upon the respondents, they would have cross-examined her and the Court would have thereby been enabled to adjudicate upon the controversy and record a precise finding about who exactly was responsible for the two minor daughters of the appellant staying over with respondent No.4. The appellant did not adduce even an iota of evidence in support of the averments made in the course of the petition in spite of the fact that a large number of opportunities were afforded to her.

8. In order to succeed in a petition under Section 7 of Guardian and Ward Act read with Sections 6 & 13 of the Hindu Minority and Guardianship Act, 1956, the appellant must prove her entitlement to the requested appointment. For that purpose, the appellant must step into the witness box as her own witness and also adduce other supportive/corroborative evidence to the effect that she possesses financial resources for the up-keep of the children and that their interest lies in their being with the mother. A host of other factors are also required to be averred and proved by an appellant of that category. In the absence of any explanation, a mother who leaves her minor daughters while getting away from the matrimonial house may not be able to raise a valid plea for her appointment as their guardian. In any case, the present is a case of complete want of evidence. It may be noticed, on point of fact, that the learned counsel for the parties conceded before this Court that the minor daughters have since attained majority. In that view of things as well, the present appeal would not appear to be competent.

9. In the light of foregoing discussion, the appeal is held to be devoid of merit and is ordered to be dismissed.

November 21, 2007
SRM

(S. D. ANAND)
JUDGE

Note: Whether referred to reporter ? Yes/No